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Supreme Court, U.S.

FILED

MAY 10 1996

No. 94-1988

CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1995

CAMPS NEWFOUND/OWATONNA, INC.,  
vs. *Petitioner,*  
TOWN OF HARRISON, *et al.,*  
*Respondents.*

On Writ of Certiorari to the  
Maine Supreme Judicial Court

JOINT APPENDIX

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SUPERIOR COURT  
STATE OF MAINE  
CUMBERLAND COUNTY

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND, OWATONNA, INC.,  
a Maine Non-Profit Corporation,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, SUSAN  
SEARLES, MICHAEL DARCY, PAUL KILGORE, ALBERT  
HAGGERTY and ROBERT BAKER, as the Harrison Mu-  
nicipal Officers and Assessors, and MICHAEL THORNE  
as the Harrison Tax Collector,  
*Defendants*

DOCKET ENTRIES

DATE	PROCEEDINGS
1992	
June 04	Received 06-03-92 Complaint for Declaratory & Injunctive Relief and for Damages filed.
June 24	Received 6/24/92. Acceptance of Service filed by William Plouffe, Esq. for defendant Inhabitants of the Town of Harrison on 6/22/92.
July 10	Received 07-10-92. Defendants, Inhabitants of the Town of Harrison, Susan Searles, Michael Darcy, Paul Kilgore, Albert Haggerty, Robert Baker and Michael Thorne's Answer filed.



DATE	PROCEEDINGS
1992	
July 16	Received 07-16-92. Exhibits A & B to be attached to Plaintiffs' Complaint filed. Acceptance of Service filed. Thomas D. Warren, Deputy A.G. Accepted Service for Party-in-interest, Attorney General of the State of Maine.
July 29	Received 07-29-92. Plaintiff's Case File Notice and Pretrial Scheduling Statement and Jury Demand Rule 38(b), M.R. CIV.P. filed.
Aug. 5	Received 08-05-92: Letter from Robert Alan Wake, AAG, entering his appearance as Intervenor on behalf of the Defendants, filed. Attorney General's Notice of Intervention filed.
Aug. 18	Received 08-18-92: Plaintiff's Notification of Discovery Service filed. Interrogatories Propounded to Defendants and Request for Admissions, served on William Plouffe, Esq. on 8-17-92.
Sept. 18	Received 09-18-92: Defendants' Notification of Discovery Service filed. Defendants' Response to Plaintiff's Request for Admissions served on William Dale, Esq. on 8-17-92.
Sept. 21	Received 9/21/92. Defendant's Notification of Discovery Service filed. Defendants' Answers to Interrogatories Propounded by Plaintiff served on William H. Dale, Esq. on 9/18/92.

DATE	PROCEEDINGS
1992	
Oct. 13	Received 10-13-92. Defendants' Motion for Judgment on the Pleadings with Attachments A-C filed. Defendants' Request for Hearing on Motion filed.
Oct. 15	Received 10-9-92. Expedited Pretrial Order filed. (Fritzsche, J.) "Expedited Pretrial Order filed. Discovery to be closed by 1/31/93 Case ordered placed on the non-jury trial list 30 days after close of discovery. By order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket." 10-14-92—Copies to William Dale, William Plouffe and Robert Allan Wake, Esqs.
Oct. 23	Received 10-23-92. Defendants' Notification of Discovery Service filed. Defendants' Supplemental Answers to Plaintiff's Interrogatories served on William H. Dale, Esq. on 10-22-92.
Nov. 2	Received 11-2-92. Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Judgment on the Pleadings.
Nov. 13	Received 11/12/92. Defendant's Reply Memorandum to Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Judgment on the Pleadings filed.
Nov. 13	Received 11-13-92. State's Motion for Enlargement of Time to File Reply Memorandum filed.
Nov. 20	Received 11-20-92. State's Reply Memorandum of Law in Support of Town's Motion for Judgment on the Pleadings filed.



DATE	PROCEEDINGS
1992	
Dec. 30	On 12-29-92: Hearing Held on Defendant's Motion for Judgment on the Pleadings. Court Takes Matter Under Advisement. Perkins, J. Presiding. Tape No. 570
Dec. 31	Received 12-31-92. Defendant's Notification of Discovery Service filed. Interrogatories Propounded to Plaintiff and Request for Product of Documents served on William H. Hale, Esq. on 12-30-92.
1993	
Jan. 04	Received 01-04-93. Plaintiff's Notification of Discovery Service filed. Second Set of Requests for Admissions Served on William L. Plouffe, Esq. on 12-31-92.
Jan. 11	Received 01-11-93. Plaintiff's Notification of Discovery Service filed. Plaintiff's Request to Intervenor for Admissions Served on Robert Alan Wake, Esq. on 01-07-93.
Feb. 01	Received 02-01-93. Defendants' Notification of Discovery Service filed. Defendants' Objection to Plaintiff's Second Request for Admissions and Alternatively, Defendants' Response Thereto Served on William H. Dale, Esq. on 01-29-93.
Feb. 11	Received 02-11-93. Intervenor's Notification of Discovery Service filed. Response to Plaintiff's Request for Admissions Served on William H. Dale, Esq. on 02-09-93.

DATE	PROCEEDINGS
1993	
Feb. 24	Received 02/24/93: Plaintiff's Notification of Discovery Service filed. Plaintiff's Answers to Municipal Defendants' Interrogatories served on William L. Plouffe, Esq. on February 23, 1993. Plaintiff's Motion to Amend Complaint filed. First Amended Complaint for Declaratory and Injunctive Relief, and for Damages filed. Plaintiff's Request for Hearing on Motion to Amend Complaint filed.
March 4	Received 03-04-93: Order filed. (Lipez, J.) ORDERED that Plaintiff's motion dated February 23, 1993 to Amend Complaint is granted without objection. On 03-04-93: Copies mailed to Robert Alan Wake, William Plouffe, and William Dale, Esqs.
Mar. 9	Received 3-9-9 Order on Failure to File Report of Conference of Counsel filed. (Lipez, J.) It is therefore ORDERED that, unless the Report of Conference of Counsel is filed within ten (10) days hereof, this case will be dismissed with prejudice. 3-9-93 copy mailed to: William Dale, William Plouffe and Robert Wake, Esqs.
Mar. 18	Received 03-18-93: Plaintiff's Motion to Extend Time to File Report of Conference of Counsel filed. Affidavit of William H. Dale with Attachment filed.

DATE	PROCEEDINGS
1993	
March 19	Received 03-18-93: Order filed. (Fritzsche, J.) ORDERED, that the date for filing the Report of Conference of Counsel be and hereby is extended to March 24, 1993. On 03-19-93: Copies mailed to Robert Alan Wake, William Plouffe and William Dale, Esqs.
Mar. 24	Received 03-24-93: Joint Report of "Conference of Counsel with Attachments" filed.
Apr. 9	Received 4-9-93. Report of Conference of Counsel filed.
Apr. 12	Received 04-09-93: Plaintiff's Motion for Summary Judgment filed. Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment with Exhibits 1, 2 & 3 filed. Plaintiff's Summary Judgment Factual Record filed. Plaintiff's Request for Hearing on Motion filed.
Apr. 21	Received 04-21-93: Defendants' Objection to and Motion to Stay Plaintiff's Motion for Summary Judgment and Incorporated Memorandum filed.
Apr. 23	Received 04-23-93. Defendant's Request for Hearing on Objection to and Motion to Stay Plaintiff's Motion for Summary Judgment and Incorporated Memorandum of Law filed.

DATE	PROCEEDINGS
1993	
Apr. 27	Received 04-27-93: Letter from William L. Plouffe, Esq. asking for expedited hearing on his Motion to Dismiss the Motion for Summary Judgment and his Motion to Stay filed.
April 28	Received 04-28-93: Decision and Order filed. (Perkins, J.) The Order and Entry Shall Be: Defendants' Motion to Dismiss is Granted only as to Count II and otherwise Denied. On 04-28-93: Copies mailed to Robert Alan Wake, William Plouffe, and William Dale, Esqs. Defendants' Motion for Expedited Hearing and Incorporated Memorandum filed.
May 04	Received 05-04-93: Intervenor State of Maine's Memorandum in Response to Municipal Defendants' Motion for Stay filed.
May 06	Received 05-06-93: Copy of Letter from William L. Plouffe, Esq. to William H. Dale, Esq. asking that all parties sign Joint Motion to Resolve Certain Outstanding Issues and then file with court filed.
May 10	Received 05-07-93: Plaintiff's Motion to Alter, Amend or Reconsider filed. Plaintiff's Memorandum of Law in Support of its Motion to Alter, Amend or Reconsider filed. Plaintiff's Request for Hearing on Motion filed.
May 13	Received 05-13-93: Joint Motion to Resolve Certain Outstanding Issues and to Schedule Proceedings filed.

DATE	PROCEEDINGS
1993	
May 13	Received 05-13-93: Order filed. (Cole, J.)  It is hereby ORDERED: 1. Pursuant to M.R.Civ. P. 16(c) (2), the court grants leave to the parties to file their Motions for Summary Judgment after the discovery deadline of January 31, 1993. 2. Defendants have until May 21, 1993 to respond to Plaintiff's Motion for Summary Judgment dated April 9, 1993. 3. Defendants shall have until June 1, 1993 to file their Motion for Summary Judgment. Pursuant to rule 79(a) of the Maine Rules of Civil Procedure, the Clerk is directed to enter this order on the civil docket by notation incorporating it by reference. ON 05-14-93: Copies mailed to Robert Alan Wake, William Plouffe and William Dale, Esqs.
May 24	Received 05-21-93: Municipal Defendants' Objection to Plaintiff's Motion for Summary Judgment and Memorandum filed.
May 25	Received 05-25-93. Municipal Defendants' Objection to Plaintiff's Motion to Alter, Amend or Reconsider and Memorandum filed. Intervenor, State of Maine's Cross-Motion for Summary Judgment filed. Intervenor, State of Maine's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of State's Cross-Motion filed. Intervenor, State of Maine's Statement of Material Facts in Support of Cross-Motion for Summary Judgment filed.

DATE	PROCEEDINGS
1993	
	Intervenor, State of Maine's Response to Plaintiff's Statement of Material Facts filed. Intervenor, State of Maine's Request for Hearing on Cross-Motion for Summary Judgment filed. Intervenor, State of Maine's Memorandum in Opposition to Plaintiff's Motion for Reconsideration filed. Intervenor, State of Maine's Motion for Enlargement of Time filed.
May 26	On 05-25-93: As to The State's Motion for Enlargement of Time: Motion Granted. (Brennan, J.) On 05-26-93: Copies mailed to Robert Alan Wake, William Plouffe and William Dale, Esqs.
May 28	Received 5-28-93. Municipal Defendants' Motion for Summary Judgment Pursuant to M.R.Civ.P 56 filed. Municipal Defendants' Memorandum in Support of Their Motion for Summary Judgment filed. Municipal Defendants' Request for Hearing on Motion for Summary Judgment filed.
June 02	Received 06-01-93: Plaintiff's Reply Memorandum to Defendants' Opposition to Plaintiff's Motion for Summary Judgment filed.
June 07	Received 06-07-93. State's Reply Memorandum in Support of Cross-Motion for Summary Judgment filed.
June 15	Received 06-15-93: Plaintiff's Memorandum in Opposition to Defendants' Cross-Motion for Summary Judgment filed.



DATE	PROCEEDINGS
1993	
June 24	Received 06-24-93: Municipal Defendants' Reply to Plaintiffs' Opposition to Defendants' Cross-Motion for Summary Judgment filed.
Aug 12	Received 08-11-93: Letter from William H. Dale confirming Motion for Summary Judgment scheduled on Sept 9, 1993 filed.
Aug. 31	Received 08-31-93: Letter from William Dale, Esq. asking that cross motions for summary judgment be heard on 09-09-93 filed.
Sept. 9	Received 9/7/93. Letter filed by William Dale, Esq. regarding Plaintiff's Pending Motion.
Sept. 17	On 9/9/93: Hearing held on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment. Court takes matter under advisement. Lipez J. Presiding. Tape 734, Index 407 thru 1643.
Oct. 07	Received 10-05-93: Letter from William Dale, Esq. asking when hearing is scheduled for pending motions filed.
1994	
Jan. 03	Received 12-30-93: Letter from William Dale, Esq. regarding pending motions filed.
Jan. 10	Received 01-07-94: Letter from William Plouffe, Esq. regarding pending motions filed.

DATE	PROCEEDINGS
1994	
March 3	Received 3/2/94. Decision and Order filed. (Lipez, J.) "JUDGMENT" Wherefore, the Order and Entry shall be: The Municipal Defendants' and the State's motions for summary judgment are DENIED. Plaintiff's motion for summary judgment is GRANTED. The court declares 36 M.R.S.A. § 6521(1)(A)(1) unconstitutional, enjoins its future enforcement by the Municipal Defendants, and orders reimbursement to plaintiff for the taxes paid as a result of the denial of the charitable tax exemption for the years 1989 to 1991 plus interest. 3/3/94—Copies to William Dale, William Plouffe, Robert Alan Wake, Esqs.
Mar. 07	Received 03-07-94: Letter from William H. Dale, Esq. regarding Plaintiff's motion for reconsideration of relief filed.
March 16	Received 3/16/94. Letter filed by William L. Plouffe, Esq. regarding Motion for Reconsideration.
March 23	Received 3/22/94. Defendant's Notice of Appeal to The Law Court from the Judgment dated March 2, 1994 filed. 3/23/94—Copies to William Dale, William Plouffe and Robert Alan Wake Esqs. On 3/22/94: Defendant's Appeal Fee of \$100.00 paid. On 3/23/94: Attested copies of the Docket Entries and Notice of Appeal given to the Clerk of the Law Court on this date.

DATE	PROCEEDINGS
1994	
Apr. 06	Received 04-04-94: Letter from Robert Alan Wake stating the Deputy Attorney General Crombie Garrett replaced him as counsel for the State filed.
Apr. 7	Received 4-6-94. Defendants/Appellant's Certificate of Transcript and Issues on Appeal Pursuant to M.R.Civ.P. 74 filed.
April 8	Received 4/6/94 Copy of letter from James C. Chute, Clerk of the Law Court, regarding the complete file must be transmitted by April 12, 1994 filed.
Apr. 22	On 4-21-94: Hearing held on Plaintiff Camps Newfound/Owatonna, Inc.'s Motion for Reconsideration. Court Takes under Advisement. (Perkins, J.) Perkins, J. Presiding. Arlene Edes, Court Reporter
May 4	On 4/29/94: As to Plaintiff's Motion to Alter, Amend Or Reconsider—Motion to alter, amend or reconsider denied. (Perkins, J.) 5/4/94—Copies to William Dale, William Plouffe and Robert Alan Wake, Esqs.
May 4	On 5/4/94: Complete file with exhibits transmitted to the Clerk of the Law Court on this date.  "LAW" On 5/4/94: Copies on the Index, Exhibit Transmission Sheet and Docket Entries Mailed to Attorneys.

STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT

Civil Action Docket No. CV-

CAMPS NEWFOUND/OWATONNA, INC.,  
a Maine Non-Profit Corporation,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, SUSAN SEARLES, MICHAEL DARCY, PAUL KILGORE, ALBERT HAGGERTY and ROBERT BAKER, as the Harrison Municipal Officers and Assessors, and MICHAEL THORNE as the Harrison Tax Collector  
*Defendants*

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF, AND FOR DAMAGES

Plaintiff sues Defendants and each of them and alleges:

CAUSE OF ACTION AND JURISDICTION

1. This action is commenced pursuant to the Maine Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-63, and pursuant to the provisions of 42 U.S.C. § 1983 to secure the rights of Plaintiff under Article I, section 8, cl. 3 (the Commerce Clause); under Article IV, section 2, cl. 1 (the Privileges and Immunities Clause); and under the 14th Amendment to the Constitution of the United States, including its privileges and immunities clause, equal protection clause, and due process clause; and under Article I, section 6-A of the Constitution of the State of Maine. This court has jurisdiction under 14 M.R.S.A. §§ 5951-63.



2. This is a suit for declaratory and injunctive and other affirmative relief to alleviate discrimination in the law of the State of Maine which unlawfully burdens interstate commerce and which illegally and unconstitutionally discriminates against Maine non-profit corporations that have out-of-state interests. Plaintiff is seeking, among other relief, a declaration that 36 M.R.S.A. § 652(1)(A)(1) is unconstitutional on its face and as applied under the aforementioned provisions of the United States Constitution and the Maine Constitution; and injunction against further enforcement of the statute; and reimbursement of taxes and interest illegally assessed and collected pursuant to that statute.

#### PARTIES

3. Plaintiff Camps Newfound/Owatonna, Inc. is a benevolent and charitable institution for purposes of 36 M.R.S.A. § 652(1)(A) and is organized under Title 13-B of the laws of the State of Maine as a non-profit corporation. Plaintiff owns real property in and its main office is located in Harrison, Maine; the property is used and occupied solely by Plaintiff for its benevolent and charitable purposes. Although Plaintiff is open to and welcomes persons who meet its qualifications and are residents of the State of Maine, and in fact serves such Maine residents, Plaintiff has conducted and operated principally for the benefit of persons who are not residents of the State of Maine.

4. Defendants are the Inhabitants of the Town of Harrison, a municipal corporation organized under Maine law, and Susan Searles, Michael Darcy, Paul Kilgore, Albert Haggerty and Robert Baker, residents of Harrison, only in their official capacity as the municipal officers and assessors for the Town, and Michael Thorne in his official capacity as Harrison Tax Collector. Defendants have responsibility for assessing and collecting taxes (and granting exemptions) in the Town of Harrison as well as for enforcing the provisions of 36 M.R.S.A. § 652(1)(A) of the laws of Maine.

#### GENERAL ALLEGATIONS

5. Plaintiff has requested exemption from taxation under the provisions of 36 M.R.S.A. § 652(1)(A) and § 841(1), both currently and for 3 years in arrears, but Defendants have denied that request because of the provisions of § 652(1)(A)(1) which disallow the exemption to institutions that are in fact conducted and operated principally for the benefit of persons who are not residents of Maine. *See Exhibits A and B attached.* Plaintiff has received no exemption for its status as a charitable and benevolent institution, but has been required in the past unlawfully to pay taxes on its property as if it were a corporation for profit. Plaintiff has paid such taxes in order to protect its property from tax liens and forfeiture.

6. The acts and practices of Defendants in assessing and collecting taxes from Plaintiff and denying its exemptions were performed under color of law, constitute official policy of Defendant Town and therefore constitute actions of the State pursuant to the commerce clause, the privileges and immunities clause, and the 14th Amendment to the United States Constitution.

7. 36 M.R.S.A. § 652(1)(A) exempts from taxation the real and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State. Subsection (1)(A)(1) of this statute then denies or qualifies the exemption to any "such institution which is in fact conducted or operated principally for the benefit of persons who are not residents of Maine . . ." Plaintiff is denied any exemption under this statutory subsection. Subsection (1)(A)(1), therefore, discriminates on its face against institutions which are involved in interstate commerce and unlawfully burdens those institutions in favor of local interests.

8. The commerce clause, the privileges and immunities clause of Article IV, and the due process, equal protection and the privileges and immunities clauses of the 14th



Amendment of the United States Constitution prohibit states from discriminating against institutions which are involved in interstate commerce in favor of local concerns thereby legitimating and establishing a form of local economic protectionism. Plaintiff has a right under these provisions of the United States Constitution and the equal protection clause of the Maine Constitution to be treated fairly and in a non-discriminatory fashion along with other charitable institutions in the State of Maine.

### COUNT I

#### Declaratory And Injunctive Relief Under Declaratory Judgments Act

9. Plaintiff re-alleges the allegations of paragraphs 1 through 8 as set forth above.

10. Because of Defendants' unreasonably high and unlawful assessments and collections against Plaintiff, has been forced to seek abatements on an administrative level and in the courts of the State of Maine, to expend attorney's fees and to litigate a tax abatement for 1989 when Plaintiff should be exempt as are charitable institutions that operate primarily for the benefit of the residents of Maine. Plaintiff is currently involved in a legal challenge with Defendants regarding the assessment of 1990 property taxes.

11. There is between the parties an actual controversy as hereinbefore set forth. Plaintiff is suffering irreparable injury and is threatened with irreparable harm in the future by reason of the unconstitutional acts herein complained of. A substantial impairment of Plaintiff's right to engage in interstate commerce has been and is being impaired so long as Defendants continue in their course of conduct. Plaintiff has no plain, adequate or complete remedy at law.

WHEREFORE, Plaintiff seeks judgment:

A. Declaring 36 M.R.S.A. § 652(1)(A)(1) unconstitutional on its face and as applied against Plaintiff under both the U.S. Constitution and the Maine Constitution.

B. Granting Plaintiff a preliminary and permanent injunction enjoining Defendants, their agents, employees, and those acting in concert with them, from enforcing 36 M.R.S.A. § 652(1)(A)(1) and maintaining a practice and policy of tax discrimination against exempt corporations that serve non-residents.

C. Awarding Plaintiff its reasonable costs and expenses herein.

D. Granting Plaintiff such other and further relief as the Court may deem just and proper including, but not limited to, reimbursements of taxes paid, plus interest, pursuant to 36 M.R.S.A. § 841(1) for all years in question.

### COUNT II

#### Relief Under Civil Rights Act 42 U.S.C. § 1983

12. Plaintiff reallages the allegations of paragraphs 1 through 11 as set forth above.

13. Defendants have caused Plaintiff to be deprived of its rights, privileges and immunities secured by the United States Constitution and have violated the provisions of 42 U.S.C. § 1983 thereby subjecting themselves to liability for equitable and legal relief.

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them:

A. Declaring 36 M.R.S.A. § 652(1)(A)(1) unconstitutional on its face and as applied against Plaintiff.

B. Granting Plaintiff a preliminary and permanent injunction enjoining Defendants, their agents, employees, and those acting in concert with them, from enforcing 36

M.R.S.A. § 652(1)(A)(1) and maintaining a practice and policy of tax discrimination against exempt corporations that serve non-residents.

C. Awarding Plaintiff its reasonable costs and expenses herein.

D. Granting Plaintiff judgment against Defendants, and each of them jointly and severally, for compensatory damages in the amount of \$60,000 for the current year and the last three years in arrears of taxes paid, plus interest.

E. Awarding Plaintiff reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and § 1988.

F. Granting Plaintiff such other and further relief as the Court may deem just and proper.

DATED at Portland, Maine this 3rd day of June, 1992.

By: /s/ William H. Dale  
WILLIAM H. DALE, ESQ.  
Attorney for Plaintiff

Jensen Baird Gardner & Henry  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112  
(207) 775-7271

## EXHIBIT A

April 15, 1992

Mr. Michael Thorne, Town Manager  
Town Hall  
Main Street  
P.O. Box 300  
Harrison, Maine 04040

Dear Mr. Thorne,

This letter is a formal request for a tax refund and for a continuing exemption from future property taxes pursuant to 36 M.R.S.A. Section 652(1)(A). As you know, Camps Newfound/Owatonna Corporation is organized as a non-profit corporation under Maine law and conducts itself as a charitable and benevolent institution pursuant to the above noted statute. We have operated as such for many years on the same property in Harrison and have never been granted the tax exempt status to which we are entitled.

It is true that we have not been fortunate enough to draw the principal number of our children from the state of Maine and that on the face of subsection (1) the statute we would not be entitled to the exemption for that reason. However, it is apparent that the subsection under which we have been denied an exemption is invalid and discriminatory and therefore in violation of the United States Constitution, Article I, section 8, clause 3 (the commerce clause), Article 4, section 2, clause 1 (the privileges and immunities clause), and the equal protection and due process clauses of the fourteenth amendment. See, for example, *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987).

We request that you acknowledge our exemption and that you refund the taxes which we paid but did not owe for 1989, 1990, and 1991. Please contact us as soon as possible so that we can take the appropriate steps with regard

to the upcoming abatement hearing. Granting our request and rightly acknowledging the invalidity of 36 M.R.S.A. Section 652(1)(A)(1) will render the abatement hearing moot and prevent us all from accumulating more legal fees. Should you deny our request, it may be best to postpone the abatement hearing on the 1990 taxes until a court of law can resolve the constitutionality of the discriminatory subsection.

Thank you for considering this most important request and for your forthcoming reply.

Sincerely,

TOWN OF HARRISON  
Telephone 583-2241

May 6, 1992

Glenn C. Johnson, Chairman  
Camps Newfound/Owatonna Corporation  
RR2 Timberwood Place  
South Salem, N.Y. 10590

RE: Refund and Exemption Request

Dear Mr. Johnson:

Following review of your request for a tax refund and exemption from property taxes, and review of the applicable Maine statute, the Board of Assessors have voted to deny your request. It is not the role nor duty of the Board of Assessors to pass judgement on or overrule a law of the State of Maine. Therefore, there can be no other action by the Assessors then to deny your request.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Michael J. Thorne  
MICHAEL J. THORNE  
Town Manager

MJT/b

cc: Board of Assessors  
William L. Plouffe, Attorney for the Town

P.O. Box 300  
(Intersection of Routes 35 & 117)  
Harrison, Maine 04040



STATE OF MAINE  
CUMBERLAND, SS.

**SUPERIOR COURT**

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA, INC.,  
a Maine Non-Profit Corporation,  
*Plaintiff*  
v.

INHABITANTS OF THE TOWN OF HARRISON, SUSAN  
SEARLES, MICHAEL DARCY, PAUL KILGORE, ALBERT  
HAGGERTY and ROBERT BAKER, as the Harrison Mu-  
nicipal Officers and Assessors, and MICHAEL THORNE  
as the Harrison Tax Collector,  
*Defendants*

**ANSWER OF DEFENDANTS INHABITANTS OF THE  
TOWN OF HARRISON, SUSAN SEARLES,  
MICHAEL DARCY, PAUL KILGORE,  
ALBERT HAGGERTY, ROBERT BAKER  
AND MICHAEL THORNE**

NOW COME the Defendants, by and through their  
attorney, and answer the Complaint as follows:

**CAUSE OF ACTION AND JURISDICTION**

1. In response to the allegations contained in the first sentence of paragraph 1 of the Complaint, Defendants state that it contains characterizations of the Complaint and conclusions of law which do not require a response. In response to the allegations contained in the second sentence of paragraph 1 of the Complaint, Defendants deny that this Court has jurisdiction.

2. Paragraph 2 of the Complaint contains characterizations of the Complaint which do not require a response in that the Complaint speaks for itself. To the extent that a response is required, Defendants deny the allegations contained in paragraph 2 of the Complaint.

**PARTIES**

3. In response to paragraph 3 of the Complaint, Defendants admit that tax records kept by the Town of Harrison show that the Plaintiff owns real property within the Town. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in paragraph 4 of the Complaint.

**GENERAL ALLEGATIONS**

5. In response to the allegations contained in the first sentence of paragraph 5 of the Complaint, Defendants state that Exhibits A and B speak for themselves and further state that the exemption requests are legally insufficient. In response to the allegations contained in the second sentence of paragraph 5 of the Complaint, Defendants admit that the Plaintiff has not received a tax exemption but deny that requiring payment of taxes by the Plaintiff has been illegal. In response to the allegations contained in the third sentence of paragraph 5 of the Complaint, Defendants admit that such taxes have been paid but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said sentence.

6. In response to the allegations contained in paragraph 6 of the Complaint, Defendants admit that they assessed and collected taxes from the Plaintiff. The remaining allegations contained in paragraph 6 are conclusions of law which do not require a response but, to the extent that a response is required, the Defendants deny the conclusions asserted.

7. The first and second sentences of paragraph 7 of the Complaint contain characterizations of a statute and do not require a response. The third and fourth sentences

in paragraph 7 contain conclusions of law which do not require a response but, to the extent that a response is required, the Defendants deny the conclusions asserted.

8. Paragraph 8 of the Complaint contains characterizations and conclusions of law which do not require a response but, to the extent that a response is required, the Defendants deny the conclusions asserted.

#### COUNT I

9. Defendants repeat and reallege the answers contained in paragraphs 1 through 8 above as if set forth fully herein.

10. Defendants deny the allegations contained in the first sentence of paragraph 10 of the Complaint. In response to the second sentence of paragraph 10, Defendants admit that the Plaintiff has applied for a partial abatement of its 1990 taxes, which abatement was denied by the Town of Harrison assessors, and that the denial has been appealed by the Plaintiff to the Cumberland County Commissioners.

11. Defendants deny the allegations contained in paragraph 11 of the Complaint.

WHEREFORE, Defendants request judgment against Plaintiff with costs and attorney's fees for defense of this action.

#### COUNT II

12. Defendants repeat and reallege the answers contained in paragraphs 1 through 11 as if set forth in full herein.

13. Defendants deny the allegations contained in paragraph 13 of the Complaint.

WHEREFORE, Defendants request judgment against Plaintiff with costs and attorney's fees for defense of this action.

#### AFFIRMATIVE DEFENSES

##### *First Affirmative Defense*

With respect to tax years 1989 and 1990, Plaintiff is precluded from relief by the doctrines of waiver, *res judicata* and collateral estoppel.

##### *Second Affirmative Defense*

The Plaintiff's claims are not ripe for review since Plaintiff has failed to exhaust its administrative remedies.

##### *Third Affirmative Defense*

Count II of the Complaint fails to state a claim upon which relief can be granted.

##### *Fourth Affirmative Defense*

This Court lacks subject matter jurisdiction over the claims asserted.

##### *Fifth Affirmative Defense*

The Plaintiff has failed to join an indispensable party, to wit: the State of Maine.

##### *Sixth Affirmative Defense*

The Plaintiff's claim for damages is barred by the doctrine of Sovereign Immunity.

WHEREFORE, Defendants request judgment against Plaintiff with costs and attorney's fees for defense of this action.

DATED: July 9, 1992

/s/ William L. Plouffe  
WILLIAM L. PLOUFFE, ESQ.  
Attorneys for Defendants

Drummond Woodsum Plimpton  
& MacMahon  
245 Commercial Street  
Portland, ME 04101  
(207) 772-1941

STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA, INC.,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, *et als.*,  
*Defendants*

and

STATE OF MAINE,  
*Intervenor*

MOTION TO AMEND COMPLAINT

NOW COMES Plaintiff, by and through its undersigned counsel, and moves to amend its complaint as follows: first, by amending the caption and paragraph 3 of the complaint to change its name from "Camps Newfound/Owatonna, Inc." to "Camps Newfound/Owatonna Corporation" to conform with the correct designation as shown by its original articles of merger from 1986 and the certificate from the Secretary of State's office indicating "Camps Newfound/Owatonna Corporation" to be the correct name; and second, to amend paragraph 3 of the complaint to recognize the minor easements on the property held by Loon Echo Inland Trust, Central Maine Power Company and New England Telephone Company. A copy of the proposed amendment is attached.

Pursuant to Rule 15(c), Maine Rules of Civil Procedure, leave to amend "shall be freely given when justice so requires." See *McKinnon v. Tibbets*, 440 A.2d 1028

(Me. 1982); Field, McKusick & Wroth, *Maine Civil Practice*, § 15.4. Here, in order to correct two technical errors in the pleadings, Plaintiff has moved for this amendment. Given the fact that there are no similarly named corporations in Defendants' area and that the parties recently litigated a related matter, see *Camps Newfound/Owatonna v. Town of Harrison*, 604 A.2d 908 (Me. 1992), there has been no confusion or prejudice to Defendants on the name change. Similarly, the three minor easements on the property do not effect the issues raised by the case, but are being recognized in the interests of complete accuracy regarding Plaintiff's title. Therefore, the interest of justice requires granting of this Motion to Amend.

DATED at Portland, Maine this 23rd day of February, 1993.

By: /s/ William H. Dale  
WILLIAM H. DALE, ESQ.  
Attorney for Plaintiff

JENSEN BAIRD GARDNER & HENRY  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112  
(207) 775-7271



STATE OF MAINE  
CUMBERLAND, SS.

**SUPERIOR COURT**

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA CORPORATION,  
a Maine Non-Profit Corporation,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, SUSAN SEARLES,  
MICHAEL DARCY, PAUL KILGORE, ALBERT HAGGERTY  
and ROBERT BAKER, as the Harrison Municipal Officers  
and Assessors, and MICHAEL THORNE as the Harrison  
Tax Collector,  
*Defendants*

**FIRST AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF, AND FOR DAMAGES**

Plaintiff sues Defendants and each of them and alleges:

**CAUSE OF ACTION AND JURISDICTION**

1. This action is commenced pursuant to the Maine Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-63, and pursuant to the provisions of 42 U.S.C. § 1983 to secure the rights of Plaintiffs under Article I, section 8, cl. 3 (the Commerce Clause); under Article IV, section 2, cl. 1 (the Privileges and Immunities Clause); and under the 14th Amendment to the Constitution of the United States, including its privileges and immunities clause, equal protection clause, and due process clause; and under Article I, section 6-A of the Constitution of the State of Maine. This court has jurisdiction under 14 M.R.S.A. §§ 5951-63.

2. This is a suit for declaratory and injunctive and other affirmative relief to alleviate discrimination in the law of the State of Maine which unlawfully burdens interstate commerce and which illegally and unconstitutionally discriminates against Maine non-profit corporations that have out-of-state interests. Plaintiff is seeking, among other relief, a declaration that 36 M.R.S.A. § 652(1)(A)(1) is unconstitutional on its face and as applied under the aforementioned provisions of the United States Constitution and the Maine Constitution; an injunction against further enforcement of the statute; and reimbursement of taxes and interest illegally assessed and collected pursuant to that statute.

**PARTIES**

3. Plaintiff Camps Newfound/Owatonna Corporation is a benevolent and charitable institution for purposes of 36 M.R.S.A. § 652(1)(A) and is organized under Title 13-B of the laws of the State of Maine as a non-profit corporation. Plaintiff owns real property in and its main office is located in Harrison, Maine; the property is used and occupied solely by Plaintiff for its benevolent and charitable purposes (excepting only that its property is subject to: (i) a term conservation easement to Loon Echo Land Trust, Inc. which is also a benevolent and charitable institution within the meaning of 36 M.R.S.A. § 652(1)(A) and § 652(1)(J) and which conservation easement grants Loon Echo no affirmative use rights, but rather serves only to limit Plaintiff's use of the property), (ii) a standard utility pole easement in favor of New England Telephone Company and (iii) a standard utility line easement in favor of Central Maine Power Company. Although Plaintiff is open to and welcomes persons who meet its qualifications and are residents of the State of Maine, and in fact serves such Maine residents, Plaintiff has conducted and operated principally for the benefit of persons who are not residents of the State of Maine.

4. Defendants are the Inhabitants of the Town of Harrison, a municipal corporation organized under Maine law, and Susan Searles, Michael Darcy, Paul Kilgore, Albert Haggerty and Robert Baker, residents of Harrison, only in their official capacity as the municipal officers and assessors for the Town, and Michael Thorne in his official capacity as Harrison Tax Collector. Defendants have responsibility for assessing and collecting taxes (and granting exemptions) in the Town of Harrison as well as for enforcing the provisions of 36 M.R.S.A. § 652 (1)(A) of the laws of Maine.

#### GENERAL ALLEGATIONS

5. Plaintiff has requested exemption from taxation under the provisions of 36 M.R.S.A. § 652(1)(A) and § 841(1), both currently and for 3 years in arrears, but Defendants have denied that request because of the provisions of § 652(1)(A)(1) which disallow the exemption to institutions that are in fact conducted and operated principally for the benefit of persons who are not residents of Maine. *See Exhibits A and B attached.* Plaintiff has received no exemption for its status as a charitable and benevolent institution, but has been required in the past unlawfully to pay taxes on its property as if it were a corporation for profit. Plaintiff has paid such taxes in order to protect its property from tax liens and forfeiture.

6. The acts and practices of Defendants in assessing and collecting taxes from Plaintiff and denying its exemptions were performed under color of law, constitute official policy of Defendant Town and therefore constitute actions of the State pursuant to the commerce clause, the privileges and immunities clause, and the 14th Amendment to the United States Constitution.

7. 36 M.R.S.A. § 652(1)(A) exempts from taxation the real and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State. Subsec-

tion (1)(A)(1) of this statute then denies or qualifies the exemption to any "such institution which is in fact conducted or operated principally for the benefit of persons who are not residents of Maine . . ." Plaintiff is denied any exemption under this statutory subsection. Subsection (1)(A)(1), therefore, discriminates on its face against institutions which are involved in interstate commerce and unlawfully burdens those institutions in favor of local interests.

8. The commerce clause, the privileges and immunities clause of Article IV, and the due process, equal protection and the privileges and immunities clauses of the 14th Amendment of the United States Constitution prohibit states from discriminating against institutions which are involved in interstate commerce in favor of local concerns thereby legitimating and establishing a form of local economic protectionism. Plaintiff has a right under these provisions of the United States Constitution and the equal protection clause of the Maine Constitution to be treated fairly and in a non-discriminatory fashion along with other charitable institutions in the State of Maine.

#### COUNT I

##### Declaratory And Injunctive Relief Under Declaratory Judgments Act

9. Plaintiff re-alleges the allegations of paragraphs 1 through 8 as set forth above.

10. Because of Defendants' unreasonably high and unlawful assessments and collections against Plaintiff, Plaintiff has been forced to seek abatements on an administrative level and in the courts of the State of Maine, to expend attorney's fees and to litigate a tax abatement for 1989 when Plaintiff should be exempt as are charitable institutions that operate primarily for the benefit of the residents of Maine. Plaintiff is currently involved in a legal challenge with Defendants regarding the assessment of 1990 property taxes.



11. There is between the parties an actual controversy as hereinbefore set forth. Plaintiff is suffering irreparable injury and is threatened with irreparable harm in the future by reason of the unconstitutional acts herein complained of. A substantial impairment of Plaintiff's right to engage in interstate commerce has been and is being impaired so long as Defendants continue in their course of conduct. Plaintiff has no plain, adequate or complete remedy at law.

WHEREFORE, Plaintiff seeks judgment:

A. Declaring 36 M.R.S.A. § 652(1)(A)(1) unconstitutional on its face and as applied against Plaintiff under both the U.S. Constitution and the Maine Constitution.

B. Granting Plaintiff a preliminary and permanent injunction enjoining Defendants, their agents, employees, and those acting in concert with them, from enforcing 36 M.R.S.A. § 652(1)(A)(1) and maintaining a practice and policy of tax discrimination against exempt corporations that serve non-residents.

C. Awarding Plaintiff its reasonable costs and expenses herein.

D. Granting Plaintiff such other and further relief as the Court may deem just and proper including, but not limited to, reimbursements of taxes paid, plus interest, pursuant to 36 M.R.S.A. § 841(1) for all years in question.

## COUNT II

Relief Under Civil Rights Act  
42 U.S.C. § 1983

12. Plaintiff realleges the allegations of paragraphs 1 through 11 as set forth above.

13. Defendants have caused Plaintiff to be deprived of its rights, privileges and immunities secured by the

United States Constitution and have violated the provisions of 42 U.S.C. § 1983 thereby subjecting themselves to liability for equitable and legal relief.

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them:

A. Declaring 36 M.R.S.A. § 652(1)(A)(1) unconstitutional on its face and as applied against Plaintiff.

B. Granting Plaintiff a preliminary and permanent injunction enjoining Defendants, their agents, employees, and those acting in concert with them, from enforcing 36 M.R.S.A. § 652(1)(A)(1) and maintaining a practice and policy of tax discrimination against exempt corporations that serve non-residents.

C. Awarding Plaintiff its reasonable costs and expenses herein.

D. Granting Plaintiff judgment against Defendants, and each of them jointly and severally, for compensatory damages in the amount of \$60,000 for the current year and the last three years in arrears of taxes paid, plus interest.

E. Awarding Plaintiff reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and § 1988.

F. Granting Plaintiff such other and further relief as the Court may deem just and proper.

DATED at Portland, Maine this 23rd day of February, 1993.

By: /s/ William H. Dale  
WILLIAM H. DALE, Esq.  
Attorney for Plaintiff

Jensen Baird Gardner & Henry  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112  
(207) 775-7271



STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT

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Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA CORPORATION,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, *et als.*,  
*Defendants*

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PLAINTIFF'S SUMMARY JUDGMENT  
FACTUAL RECORD

WILLIAM H. DALE, ESQ.  
JENSEN BAIRD GARDNER & HENRY  
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PLAINTIFF'S SUMMARY JUDGMENT  
FACTUAL RECORD

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STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA CORPORATION,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, *et als.*,  
*Defendants*

PLAINTIFF'S STATEMENT OF UNCONTESTED FACTS

Pursuant to M.R. Civ. P. 56 and 7(d), Plaintiff submits the following as its listing of uncontested material facts for purposes of its pending Motion for Summary Judgment. Unless otherwise stated, these statements are true for each of the three years at issue.

1. The Complaint was filed on June 3, 1992 and amended on March 4, 1993.
2. The State of Maine intervened as a Defendant on August 3, 1992.
3. The Municipal Defendants and Defendant-State filed a Motion for Judgment on the Pleadings on October 9, 1992, which was briefed by the parties, argued before the Superior Court on or about December 29, 1992 and is presently under advisement.
4. Pursuant to a letter dated April 15, 1992 from Glen Johnson, the chairman of its board of trustees, Plaintiff demanded that the Municipal Assessors grant it tax exempt status. *See* Defendants' Response to First Request for Admissions No. 6; Defendants' Answer to Interrogatory No. 11. This was the first time Plaintiff requested total exemption from municipal real estate taxes for its property. Stipulation No. 11.

5. In Harrison, the five individuals who serve as the Board of Selectmen/Municipal Officers also serve as the Assessors. Defendants' Response to Second Request for Admissions No. 9.
6. The Municipal Assessors denied Plaintiff's request for exemption by letter dated May 6, 1992 because Plaintiff serves principally nonresidents. In that letter, they stated: "Following review of your request for a tax refund and exemption from property taxes, and review of the applicable Maine statute, the Board of Assessors have voted to deny your request. It is not the role nor duty of the Board of Assessors to pass judgment on or overrule a law of the State of Maine. Therefore, there can be no other action by the Assessors then to deny your request." Defendants' Response to First Request for Admissions No. 6, Defendants' Answers to Interrogatories Nos. 3, 10 and 11.
7. Plaintiff's request for a property tax abatement for 1990, based on a change in valuation attributable to a conservation easement, is presently pending before the Cumberland County Commissioners and all parties, including the County Commissioners, have agreed to stay that proceeding pending final disposition of this action. Stipulation No. 12.
8. Defendant Assessors admit that they assess taxes and, where appropriate, grant exemptions and Defendant Tax Collector admits that he collects the same pursuant to Maine law. Defendants' Response to First Request for Admissions No. 8; Defendants' Response to Second Request for Admissions No. 12; Plaintiff's Answer to Interrogatory No. 13; and Plaintiff's Answers to Paragraphs 4 and 6 of the Complaint.
9. Plaintiff is a Maine non-profit corporation in good standing. Defendants' Response to Second Request for Admissions No. 10; Stipulation No. 2.

10. Plaintiff's Articles of Incorporation resulted from a plan of merger of two predecessor corporations: Owatonna Camp for Boys Association being merged into Newfound Camp for Girls Association in 1986. The purposes of Plaintiff corporation as set out in such Articles of Merger or Articles of Incorporation are as follows:

The purposes of said corporation are to provide for an organized, incorporated entity through which a summer camp for boys and girls may be owned and operated in the Town of Harrison and State of Maine, or in other towns, cities or plantations within or without the State of Maine, exclusively for the special accommodation, training, education and philosophical enlightenment and development of boys and girls who are interested in the spiritual doctrines, teachings and application of Christian Science, so called, as discovered and founded by Mary Baker Eddy . . . to the benefit and advantage of this Corporation and the boys and girls who may from time to time be taking advantage of the services and teachings it shall make available, all without limitation with regard to such boys and girls because of race, creed or color and all without profit to the Corporation or to any member of the Corporation or to any individual, without limiting, however, the payment of salaries and expenses to such of the trustees and other employees who shall be employed by the Corporation.

Affidavit of Susan Smith at ¶ 4.

11. Plaintiff's by-laws, last amended in August of 1988, provide in Article II for the same purpose as recited above for corporate purposes under the Articles of Incorporation and further provide in Sec. 1 of Article III of the by-laws as follows:

Sec. 1. The affairs of this corporation shall be administered for the purpose of meeting the religious and educational needs and desires of boys and girls of an age when they may be interested in attending summer camp where such educational and religious teachings are made available.

Sec. 2. Neither this corporation, any trustee or other officer hereof or member hereof shall be entitled to any personal profits from the existence or the operations of this corporation in any manner whatsoever, excepting only that the salary of the general manager or nominal or reimbursement compensation for expenses disbursed or incurred for the benefit of this corporation and bona vide reasonable compensation for bona vide services rendered for the benefit of the corporation.

Article VIII provides as follows:

. . . [N]o amendment shall be made which shall have affect or change the non-profit and benevolent position or structure of this corporation, nor which shall allow or provide for any personal profit or benefit to be received by any trustee hereof, or any officer hereof, whether directly or indirectly, nor which shall in any way affect the position of this corporation or donors or contributors of funds to this corporation under Sections 170(c)(2)(B) of IRC 1954 and 501(c)(3) of IRC 1954.

Article IX of the by-laws provides as follows:

Upon final termination of the activities of this corporation or upon dissolution thereof, the trustees shall liquidate the assets of this corporation in such manner and upon such terms and conditions as they deem reasonable and fair



and thereafter shall turn over and donate as a gift the proceeds of such liquidation without consideration to the First Church of Christ Scientist in Boston, Massachusetts, for such religious and charitable use as said Church shall determine.

Affidavit of Susan Smith at ¶ 4.

12. Plaintiff's summer camp is run exclusively for the benefit of children of the Christian Science faith. Campers range in age from seven to sixteen. Many, but not all, campers return season after season; indeed, in some cases, the children are third or fourth generation campers. The number of campers, their length of stay, average tuition and the like are shown on Exhibit 1 attached hereto and made a part hereof. This is the same Exhibit provided to Defendants in Plaintiff's answer to Interrogatory No. 29. Affidavit of Susan Smith at ¶¶ 10, 11 and 12.
13. For each of the years in dispute, Plaintiff qualified as a Sec. 501(c)(3) corporation under the Internal Revenue Code. Stipulation No. 5; Defendants' Response to Second Request for Admissions No. 13.
14. The Municipal Defendants are unaware of any evidence, whether documentary or otherwise, showing or tending to show that Plaintiff was not a "charitable and benevolent institution," as that term is used in 36 M.R.S.A. § 652(1)(A). Defendants' Response to Second Request for Admissions No. 8.
15. Plaintiff conducted its activities at all times in accordance with the purposes stated in its Charter and by-laws. Affidavit of Susan Smith at ¶ 5.
16. Pursuant to Plaintiff's Charter, by-laws and Mission Statement, Plaintiff's camp is conducted with the intention that, although not financially self-supporting, operation of the camp helps the children to grow spiritually, mentally and physically in accordance

with the tenets of the Christian Science faith and thereby to become good citizens in society as adults. In keeping with Plaintiff's strong Christian Science influence over daily activities at the camp, supervised prayer or meditation sessions are conducted each day in addition to regular church services on Sunday. Affidavit of Susan Smith at ¶¶ 3 and 10.

17. As shown by Plaintiff's IRS Form-990 filings, the revenues which it receives, whether from tuitions or otherwise, are far less than the operating costs to run the camps annually; indeed, it takes approximately \$175,000 per year in charitable donations from Plaintiff's contributors to make up for the annual operational deficit. Affidavit of Susan Smith at ¶ 7.
18. While admission to Plaintiff's camp is open to children pursuing the Christian Science faith without regard to race, color or creed, Plaintiff does in fact provide full and partial scholarships for some campers. Affidavit of Susan Smith at ¶ 8.
19. Plaintiff is operated in good faith to serve the legitimate purposes stated in its Chapter, by-laws and Mission Statement and in no way has been established or operated under pretense or pretext to avoid taxation. Affidavit of Susan Smith at ¶ 9; Defendants' Response to Second Request for Admissions No. 8; Plaintiff's Answer to Interrogatory No. 22.
20. Pursuant to Plaintiff's Charter and by-laws and, in fact, Plaintiff receives no revenue other than that which is directly related to running its benevolent and charitable summer camp for children in the Christian Science faith. In particular, Plaintiff receives no revenues or income from renting out its real property, equipment or personnel for such private purposes as weddings, corporate retreats or the

like. Affidavit of Susan Smith at ¶ 4; Plaintiff's Answer to Interrogatory No. 19.

21. The only revenue received by Plaintiff is camper tuitions, which fail to cover the cost of operation of the camp, charitable and benevolent contributions made by private donors to fund the operating deficit, and income from Plaintiff's modest endowment. Affidavit of Susan Smith at ¶ 7; Plaintiff's Answer to Interrogatory No. 22.
22. For each of the years in dispute (1989, 1990, 1991), Plaintiff owned the real property in question. Stipulation No. 1; Defendants' Response to First Request for Admissions No. 12. Plaintiff's property is unencumbered by any mortgages. Affidavit of Susan Smith at ¶ 4.
23. The NET and CMP easements on Plaintiff's property do not defeat Plaintiff's tax exemption status. Stipulation No. 9.
24. For each of the years in dispute, Loon Echo Inland Trust, Inc. was a Maine non-profit corporation and a benevolent and charitable institution within the meaning of 36 M.R.S.A. § 652(1)(A). Stipulation No. 4.
25. Subject only to the easements to NET, CMP and Loon Echo Inland Trust, Plaintiff's property is occupied solely by it for its charitable and benevolent purposes; in particular, no private functions such as weddings, corporate retreats or the like are conducted on Plaintiff's property. Affidavit of Susan Smith at ¶ 4; Plaintiff's Answer to Interrogatories No. 16 and 17.
26. Plaintiff's real estate taxes assessed as of April 1, 1989 amounted to \$24,639.65 and have been paid in full. Defendants' Response to First Request for Admissions No. 2.

27. Plaintiff's real estate assessed as of April 1, 1990 amounted to \$21,618.49 and have been paid in full. Defendants' Response to First Request for Admissions No. 3.
28. Plaintiff's real estate taxes assessed as of April 1, 1991 amounted to \$20,770.71 (plus \$994.70 for personal property) and have been paid in full. Defendants' Response to First Request for Admissions No. 4.
29. Plaintiff's exemption has not been denied by reason of the source from which its funds are derived. Defendants' Response to First Request for Admissions No. 13. Payment of over \$20,000 a year in real estate taxes serves to aggravate Plaintiff's annual operating deficit and, to a certain extent, precludes Plaintiff from retaining certain supplemental services for its campers, such as outside art and music consultants. Further, to some extent, the cost of the property taxes is passed along to campers in the form of increased tuition. Affidavit of Susan Smith at ¶ 13.
30. For each of the years in dispute, Plaintiff's average weekly charge for campers exceeded \$30 per week. Stipulation No. 6.
31. No director, trustee, officer or employee of any organization claiming exemption received directly or indirectly any pecuniary profit from the operation thereof, excepting reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes. Plaintiff's Answers to Interrogatories No. 22 and 24.
32. Plaintiff has no profits, but all of its revenue derived from the operation of its camp and the proceeds from any possible sale of its property are devoted exclusively to the purposes for which it is



organized. Affidavit of Susan Smith at ¶ 7; Plaintiff's Answer to Interrogatory No. 25.

33. Plaintiff has not failed to file with the Tax Assessors upon their request a report for its preceding year in such details as the Assessors may reasonably have required. Defendants' Response to First Request for Admissions No. 16. Plaintiff complied with any applicable filing requirements under 36 M.R.S.A. § 706. Defendants' Response to Second Request for Admissions No. 7.
34. Plaintiff is not an agricultural fair association holding parimutuel racing meets. Defendants' Response to First Request for Admissions No. 17.
35. For each of the years in dispute, more than 50% of Plaintiff's campers were non-resident. Stipulation No. 3. Indeed, in each of the years in question, approximately 95% of the campers were non-residents. Plaintiff's Answer to Interrogatory No. 29 (Exhibit D). Plaintiff's camp is the only Christian Science summer camp in New England. Affidavit of Susan Smith at ¶ 14.
36. For each of the years in dispute, Plaintiff successfully recruited campers as well as charitable donations from both Maine and other states. Stipulation No. 7. Not only has Plaintiff successfully recruited campers and charitable donations from states other than Maine, but Plaintiff advertises for campers in periodicals in states outside of Maine and sends its Executive Director annually on camper recruiting trips across the country. Affidavit of Susan Smith at ¶ 15.
37. For each of the years in dispute, there were benevolent and charitable institutions incorporated in Maine which were not in fact conducted or operated principally for the benefit of persons who are not residents of Maine and which received property tax ex-

emptions under 36 M.R.S.A. § 652(1)(A). Stipulation No. 8.

38. For each of the years in dispute, there were benevolent and charitable institutions incorporated in Maine which were in fact conducted or operated principally for the benefit of persons who are not residents of Maine and which were denied property tax exemptions under 36 M.R.S.A. § 652(1)(A) (1) because of such non-residents. Stipulation No. 10.
39. In a prior action, Plaintiff had sought judicial review of a partial abatement granted by the Assessors with respect to the 1989 tax valuation, but did not challenge the validity of the exemption statute in that proceeding. *See Camps Newfound/Owatonna v. Town of Harrison*, 604 A.2d 908 (Me. 1992).

DATED at Portland, Maine this 9th day of April, 1993.

By: /s/ William H. Dale  
WILLIAM H. DALE, Esq.  
Attorney for Plaintiff

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(207) 775-7271



**EXHIBIT D**  
(Answer to Interrogatory No. 29)

Year	1989	1990	1991	1992
Camper Enrollment	271	234	239	248
Family Camp Enrollment	308	170	226	222
Regular Camp Capacity	400	400	400	400
Family Camp Capacity	300	300	300	300
% Maine Campers	4%	5%	4%	4%
Average Length of Stay:				
Regular Camp	4 weeks	4 weeks	4 weeks	4 weeks
Tuition/Fees	\$370/wk	\$408/wk	\$425/wk	\$445/wk

Note: Please note that with regard to enrollment and capacity, these figures are subject to minor adjustment to reflect the fact that some campers stay for the entire 7-week summer camp season while others attend for only 3 weeks or 4 weeks.

STATE OF MAINE  
CUMBERLAND, SS.

**SUPERIOR COURT**

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA CORPORATION,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, *et als.*,  
*Defendants*

**AFFIDAVIT OF SUSAN SMITH, CHAIRMAN OF  
PLAINTIFFS—CAMPS NEWFOUND/OWATONNA  
CORPORATION**

I, Susan Smith, being first duly sworn, do depose and say as follows:

1. My name is Susan Smith, I am a resident of Montecito, California, and make the statements contained herein based upon my personal knowledge of their truth.

2. I currently serve as Chariman of the Board of Trustees for Camps Newfound/Owatonna Corporation, Plaintiff in the civil action pending in Superior Court (Cumberland County) in Portland, Maine under docket number CV-92-658.

3. For all years in dispute in this litigation, Plaintiff has in fact conducted its operation in accordance with its Charter, Bylaws and Mission Statement in good faith in running a summer camp for boys and girls of the Christian Science faith to promote their growth spiritually, mentally and physically in accordance with the express purpose laid out in the Charter and Bylaws.

4. Plaintiff owns the real property in question located on the generally easterly side of Long Lake in Harrison, Maine and has occupied and used that property exclu-

sively for its own benevolent and charitable purposes as identified in its corporate Charter and Bylaws; the property is unencumbered by any mortgage; and the property has not been rented or otherwise used for any private, for profit purposes such as wedding receptions, corporate retreats or the like.

5. At all times relevant to this litigation, Plaintiff has been organized and conducted its activities exclusively in furtherance of the benevolent and charitable purposes articulated in its Charter and Bylaws.

6. No director, trustee, officer or employee has, directly or indirectly, derived any pecuniary profit from Plaintiff's operations excepting reasonable compensation for services rendered in affecting the Corporation's benevolent and charitable purposes for which it is organized.

7. For all years at issue in this litigation, Plaintiff has earned no profit, but rather has operated at a net revenue loss annually, which loss has been made up by charitable contributions in the amount of approximately \$175,000 per year and income from the Plaintiff's modest endowment. Any and all revenues generated from Plaintiff's operations have been devoted exclusively to its charitable and benevolent corporate purposes, i.e., running its summer camp.

8. The fees charged by Plaintiff for camper tuition, although reasonable, fail to generate sufficient revenue to offset the reasonable costs of running the camp. Despite these deficit operating situations, Plaintiff has also provided scholarship aid to those campers who could not afford the tuition.

9. At all times relevant to this litigation, Plaintiff has been operating in good faith with reference to its corporate charitable and benevolent corporate purposes and has in no event engaged in any pretense to avoid taxation; on the contrary, Plaintiff has sought and received IRS status as a Sec. 501(c)(3) corporation and filed

so-called IRS Form-990's annually as a charitable corporation under federal tax law.

10. All the children who attend as campers are members of the Christian Science faith. In accordance with the Plaintiff's Charter and Bylaws, Plaintiff's goal for its campers is to run an institution that, although not financially self-supporting, nonetheless helps these children to grow spiritually, mentally and physically in accordance with the tenets of the Christian Science faith and hopefully to become responsible adults in tomorrow's society. In keeping with the Plaintiff's strong Christian Science influence over daily activities at the camp, supervised prayer or meditation sessions are conducted each day in addition to regular church services on Sunday.

11. Campers range in age from seven to sixteen. Many, but not all, campers return season after season; indeed, in some cases, the children are third or fourth generation campers.

12. The number of campers, their length of stay, average tuition and the like are shown on Exhibit 1 attached hereto and made a part hereof. This is the same Exhibit provided to Defendants in response to Interrogatory No. 29.

13. Payment of over \$20,000 a year in real estate taxes serves to aggravate Plaintiff's annual operating deficit and, to a certain extent, precludes Plaintiff from retaining certain supplemental services for its campers, such as outside art and music consultants. Further, to some extent, the cost of the property taxes is passed along to campers in the form of increased tuition.

14. Plaintiff's camp is the only Christian Science summer camp in New England.

15. Not only has Plaintiff successfully recruited campers and charitable donations from states other than Maine, but Plaintiff advertises for campers in periodicals in states outside of Maine and sends its Executive Di-

rector annually on camper recruiting trips across the country.

16. I make this Affidavit to assist Plaintiff in its Motion for Summary Judgment in this pending action.

Dated: 4/2/93

By: /s/ Susan Smith  
SUSAN SMITH

[Jurat Omitted in Printing]

EXHIBIT D  
(Answer to Interrogatory No. 29)

Year	1989	1990	1991	1992
Camper Enrollment	271	234	239	248
Family Camp Enrollment	308	170	226	222
Regular Camp Capacity	400	400	400	400
Family Camp Capacity	300	300	300	300
% Maine Campers	4%	5%	4%	4%
Average Length of Stay:				
Regular Camp	4 weeks	4 weeks	4 weeks	4 weeks
Tuition/Fees	\$370/wk	\$408/wk	\$425/wk	\$445/wk

Note: Please note that with regard to enrollment and capacity, these figures are subject to minor adjustment to reflect the fact that some campers stay for the entire 7-week summer camp season while others attend for only 3 weeks or 4 weeks.



**REPORT OF CONFERENCE OF COUNSEL  
CV-92-658**

**D. Stipulations:**

1. For each of the years in dispute (1989, 1990, 1991), Plaintiff owned the real property in question.
2. For each of the years in dispute (1989, 1990, 1991), Plaintiff was a Maine non-profit corporation.
3. For each of the years in dispute, more than 50% of Plaintiff's campers were non-residents.
4. For each of the years in dispute, Loon Echo Inland Trust, Inc. was a Maine non-profit corporation and a benevolent and charitable institution within the meaning of 36 M.R.S.A. § 652(1)(A).
5. For each of the years in dispute, Plaintiff qualified as a § 501(c)(3) corporation under the Internal Revenue Code.
6. For each of the years in dispute, Plaintiff's average weekly charge for campers exceeded \$30/week.
7. For each of the years in dispute, Plaintiff successfully recruited campers as well as charitable donations from both Maine and other states.
8. For each of the years in dispute, there were benevolent and charitable institutions incorporated in Maine, which were not in fact conducted or operated principally for the benefit of persons who are not residents of Maine and which received property tax exemptions under 36 M.R.S.A. § 652(1)(A).
9. The N.E.T. and CMP easements on Plaintiff's property do not defeat Plaintiff's tax exempt status.

10. For each of the years in dispute, there were benevolent and charitable institutions incorporated in Maine which were in fact conducted or operated principally for the benefit of persons who are not residents of Maine and which denied property tax exemptions under 36 M.R.S.A. § 652(1)(A) because of such non-residents.
11. Plaintiff never requested a property tax exemption from the Town of Harrison prior to the letter of Glenn C. Johnson, dated April 15, 1992.
12. Plaintiff's request for a property tax abatement for 1990, based on a change in valuation attributable to a conservation easement, is presently pending before the Cumberland County Commissioners and all parties, including the County Commissioners, have agreed to stay that proceeding pending final disposition of this action.

STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT

Civil Action Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA, INC.,  
Plaintiff

v.

INHABITANTS OF THE TOWN OF HARRISON, *et als.*,  
Defendants

**PLAINTIFF'S RESPONSE TO DEFENDANTS'  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS**

NOW COMES Plaintiff, Camps Newfound/Owatonna, and responds to Defendants' Interrogatories and Request for Production of Documents as follows:

*General Objection:* Plaintiff objects to the definitions and instructions sections of the Interrogatories to the extent that Plaintiff is expected strictly to comply with each and every definition and instructions in responding to each and every question on the grounds that to do so would be unreasonable and overly burdensome. Instead, Plaintiff will respond to the Interrogatories, as asked, making reference to the definitions if and as it appears necessary to understand the question.

1. Identify the person answering these Interrogatories.

*ANSWER:* Susan Smith, Chairman of Plaintiff's Board of Trustees, 581 Freehaven Drive, Montico, CA 93108.

2. Identify each and every person who to your knowledge has any knowledge of any of the facts concerning the subject matter of this case.

\* \* \* \*

- (a) The discrepancy between the name of the corporation as stated in the Complaint and as stated in I.R.S. Publication 78;
- (b) Why I.R.S. Publication 78 lists the entity as being of Salem, New York.

*ANSWER:*

- (a) Plaintiff's correct name is Camps Newfound/Owatonna Corporation. Plaintiff will seek to amend its Complaint to correct the technical discrepancy.
- (b) Salem, New York was the winter mailing address of the former general manager.

32. If the answer to Interrogatory 30 is "no," please explain why the Plaintiff is not listed in I.R.S. Publication 78.

*ANSWER:* See Response to Interrogatory 31 above.

33. Prior to the letter dated April 16, 1992 from Glen C. Johnson to Michael Thorne, Town Manager, did you ever assert to the Defendants that the statute challenged in this case is unconstitutional?

*ANSWER:* No.

34. Please explain in detail each and every way in which you are "burdened" by the statute challenged in this case, as alleged in the last sentence of paragraph 7 of the Complaint.

*ANSWER:* Plaintiff pays over \$20,000 annually to Defendant Town in municipal real estate taxes because it is denied a tax exemption based upon the out-of-state residence of a majority of its campers. This cost is passed on to all campers, including the majority who reside out-of-state, and, in effect, to all individuals who make charitable contributions to Plaintiff, and so serves to increase the tuition burdening Plaintiff, camps and contributors in terms of the extra costs and Plaintiff's ability to continue to



function financially. In addition, Plaintiff's payment of annual real estate taxes to the Town restricts the programs which it can offer to its campers and even restricts those individuals who can afford to attend the camp based upon its tuition and operating costs.

35. Do you allege that the statute challenged in this case places you at a competitive disadvantage as to other summer camps and, if so, how?

*ANSWER:* Yes, *see* response to Interrogatory 34 above, by having to pay over \$20,000 per year in real estate taxes Plaintiff is placed at a competitive disadvantage vis à vis other camps which are charitable and benevolent institutions as it must pass this cost along in the form of increased tuition.

36. Identify each and every Maine summer camp which, to your knowledge, is treated as tax exempt under the statute challenged in this case.

*ANSWER:* See Exhibit E attached.

37. Please state the bases for the allegation in paragraph 10 of the Complaint that Defendants' assessments have been "unreasonably high."

*ANSWER:* Absent the Defendants' wrongful refusals to grant a full abatement due to the illegality of the out-of-state restriction contained in 36 M.R.S.A. § 652, Plaintiff's property would be tax exempt. Further, the independent real estate appraiser retained by Plaintiff valued its real estate at approximately \$575,000 based upon the term conservation easement imposed upon the property.

38. Please state the bases for the allegation in paragraph 11 of the Complaint that there has been a "substantial impairment of Plaintiff's right to engage in interstate commerce."

*ANSWER:* See response to Interrogatory 34 above. In addition, it is apparent from the face of

the statute that it is designed to discriminate against camps serving principally children from out-of-state.

39. Please explain in detail how you computed the "compensatory damages in the amount of \$60,000.00 for the current year and the last three years in arrears of taxes paid, plus interest," as prayed for in Count II of the Complaint.

*ANSWER:* The actual amount is well in excess of \$60,000.00. Plaintiff paid municipal real estate taxes to Defendant Town of Harrison in 1989 in the amount of \$24,639.65; in 1990 in the amount of \$21,618.49; and in 1991 in the amount of \$20,770.71 (and an additional \$994.70 for personal property taxes). In addition, Plaintiff has incurred attorney's fees and costs in pursuing this matter.

40. For each of the Plaintiff's fiscal years 1989, 1990 and 1991, what was the annual operating budget?

*ANSWER:* To Plaintiff, "annual operating budget" indicates a projection of revenues and expenses; however, this budget figure becomes meaningless in light of actual revenues and expenses. Approximate operating expenses are as follows:

1989	\$550,000
1990	\$470,000
1991	\$490,000
1992	\$535,000

Plaintiff also had capital expenses for each of those years as follows:

1989	\$58,000
1990	\$ 4,000
1991	\$53,000
1992	\$42,000

41. Identify all real property owned by you other than that located in Harrison, Maine.

*ANSWER:* None.

\* \* \* \*



## EXHIBIT A

April 15, 1992

Mr. Michael Thorne, Town Manager  
 Town Hall  
 Main Street  
 P. O. Box 300  
 Harrison, Maine 04040

Dear Mr. Thorne,

This letter is a formal request for a tax refund and for a continuing exemption from future property taxes pursuant to 36 M.R.S.A. Section 652(1)(A). As you know, Camps Newfound/Owatonna Corporation is organized as a non-profit corporation under Maine law and conducts itself as a charitable and benevolent institution pursuant to the above noted statute. We have operated as such for many years on the same property in Harrison and have never been granted the tax exempt status to which we are entitled.

It is true that we have not been fortunate enough to draw the principal number of our children from the state of Maine and that on the face of subsection (1) of the statute we would not be entitled to the exemption for that reason. However, it is apparent that the subsection under which we have been denied an exemption is invalid and discriminatory and therefore in violation of the United States Constitution, Article I, section 8, clause 3 (the commerce clause), Article 4, section 2, clause 1 (the privileges and immunities clause), and the equal protection and due process clauses of the fourteenth amendment. See, for example, *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987).

We request that you acknowledge our exemption and that you refund the taxes which we paid but did not owe for 1989, 1990, and 1991. Please contact us as soon as pos-

sible so that we can take the appropriate steps with regard to the upcoming abatement hearing. Granting our request and rightly acknowledging the invalidity of 36 M.R.S.A. Section 652(1)(A)(1) will render the abatement hearing moot and prevent us all from accumulating more legal fees. Should you deny our request, it may be best to postpone the abatement hearing on the 1990 taxes until a court of law can resolve the constitutionality of the discriminatory subsection.

Thank you for considering this most important request and for your forthcoming reply.

Sincerely,

**TOWN OF HARRISON**  
Telephone 583-2241

May 6, 1992

Glenn C. Johnson, Chairman  
Camps Newfound/Owatonna Corporation  
RR2 Timberwood Place  
South Salem, N.Y. 10590

RE: Refund and Exemption Request

Dear Mr. Johnson:

Following review of your request for a tax refund and exemption from property taxes, and review of the applicable Maine statute, the Board of Assessors have voted to deny your request. It is not the role nor duty of the Board of Assessors to pass judgement on or overrule a law of the State of Maine. Therefore, there can be no other action by the Assessors then to deny your request.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Michael J. Thorne  
MICHAEL J. THORNE  
Town Manager

MJT/b

cc: Board of Assessors  
William L. Plouffe, Attorney for the Town

P.O. Box 300  
(Intersection of Routes 35 & 117)  
Harrison, Maine 04040

**EXHIBIT E**  
(Other Tax Exempt Camps in Maine)

Camp Name	Location	Tax Exempt Status
Abnaki Day Camps	Brewer	100%
Camp Berwick	Harrington	Partial
Bishopswood	Hope	Partial
Blue Hill Society for Aid to Children	Sedgwick	100%
Capella	Lucerne-in-Maine (Dedham)	100%
Center Day Camp	N. Windham	100%
Camp Chewonki	Wiscasset	100%
China Lake Baptist Camp	China	100%
Camp Connor	Poland	100%
Friends Camp	China	100%
Camp Jordan	Ellsworth	100%
Kennebec Girl Scout Council Day Camps	Cape Elizabeth	100%
JCC Camp Kingswood, Inc.	Bridgton	Partial
Lawroweld	Weld	Partial
Maine State YMCA	Winthrop	100%
ME Conservation School	Woodstock	100%
Mast Landing Nature Day Camp	Falmouth	100%
Mechuana	Winthrop	100%
Camp Natarswi	T2 R9 (unorganized territory)	100%
Camp O-AT-KA	Sebago	Partial
Pilgrim Lodge	W. Gardiner	100%
Pondicherry	Bridgton	Partial

Camp Name	Location	Tax Exempt Status
Susan Curtis	E. Stoneham	100%
Tanglewood 4H Camp	Lincolntonville	100%
Waban	Sanford	100%